



U.S Department
of Transportation

**Federal Aviation
Administration**

Western-Pacific Region
Airports Division

Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007

May 20, 2005

Mr. Peter Drinkwater
Airports Director
County of San Diego
Department of Public Works
1960 Joe Crosson Drive
El Cajon, CA 92020-1236

Dear Mr. Drinkwater:

Compliance Advisory Update

We are writing to provide an update regarding the compliance issues that were described in the Federal Aviation Administration (FAA) Compliance Advisory letter dated May 17, 2004. We are also communicating our expectation regarding a timely resolution of the compliance issues disclosed in the letter as well as several other compliance matters that require the attention of San Diego County (County), and which are more fully discussed in the second part of this letter.

A. Compliance Advisory Issues

Our Compliance Advisory letter discussed 17 issues that required specific actions and responses by the County. Based on information the FAA has received, this letter lists the Compliance Advisory letter corrective actions, summarizes the present status of the 17 issues, and reconfirms the follow-up actions that are still needed to resolve the open compliance issues.

Cajon Plaza

1. Airport Layout Plan

ACTION: The County and its consultant will work with FAA staff to complete the Draft Airport Layout Plan/Narrative Report as quickly as possible.

STATUS: Complete – FAA notification to the County dated May 13, 2005

2. Cajon Plaza

ACTION: The County will notify the FAA of the official expiration date of the lease on the Cajon Plaza.

STATUS: Complete - County notification to the FAA dated June 2, 2004

RECEIVED

MAY 23 2005

GILLESPIE FIELD

Non-Aeronautical Leasing Activities in Aeronautical Facilities

3. Exhibit G to County Lease Form

ACTION: The County will revise and provide the FAA with a copy of the updated Sections c and e of Exhibit G to the County lease form that contains language stating that advance written concurrence by the FAA is required for non-aeronautical uses of airport property.

STATUS: Complete - County notification to the FAA dated June 4, 2004

4. Termination of Non-Aeronautical Use

ACTION: The County will confirm that unauthorized and unnecessary non-aeronautical uses of airport facilities are being terminated and will end within 12 months.

STATUS: Incomplete

The County has not provided evidence that unauthorized and inappropriate non-aeronautical activities have been terminated. The County planned to conduct a system-wide inspection of aircraft storage hangars. The County has not confirmed if the inspection was performed. If an inspection was completed, the County has not provided the FAA with a copy of the inspection report.

- Please provide the FAA with a copy of the inspection report, if an inspection was done.
- Has the County eliminated any unauthorized non-aeronautical uses of airport facilities?

Residential Hangars

5. Terminate Residential Development on the La Jolla Investment Co. Site

ACTION: The County will not approve construction of new hangars containing residential dwelling units on the La Jolla Investment Company leasehold.

STATUS: Complete

La Jolla Investment Company was notified by letter dated March 13, 2004 that the FAA will not approve any more hangars with residential dwellings and will not allow the residential-use provisions of the lease to be extended beyond the lease expiration date of October 31, 2030.

6. Prohibit Residential Development at County Airports

ACTION: The County will not permit any additional residential development at any San Diego County airport. The County will take action to prevent residential dwelling units from being established on airport property, including those that are currently being negotiated.

STATUS: Incomplete

The County's notice to tenants disclosed that the FAA prohibits residential dwelling units at County airports. The County did not disclose in the notices issued to tenants that the County has established a County policy that prohibits all residential uses of airport facilities. It is the County's responsibility to actively promote and enforce a policy that prohibits airport residences of any kind.

- The revised Policy and Procedures should disclose the County policy regarding residential facilities.

Grant Assurance 24 Fee and Rental Structure

7. Airport Leasing Practices and Rate Schedule

ACTION: The County will adhere to its Airport Leasing Practices and apply a rates and charges methodology to make the airport as self-sustaining as possible by adjusting aeronautical rates to more accurately reflect economic and market conditions at its airports.

STATUS: Complete

The County provided the FAA with a rental rate report on July 30, 2004.

8. Rules, Regulations, Policies, Procedures, and Minimum Standards

ACTION: The County will provide the FAA with the new County Airport Rules and Regulations, Minimum Standards, Rates and Charges, and Revised Policy and Procedures by June 30, 2004.

STATUS: Partially complete

a) The County developed revised policies and procedures. The FAA reviewed the revised policies and procedures and provided comments to the County in an e-mail dated March 7, 2005. The policies and procedures still need to be revised to incorporate the FAA's comments. For example, the policies and procedures contain a provision allowing caretaker residences. This should be a prohibited use of County airport facilities.

b) The County completed two drafts of the Minimum Standards on June 30 and September 9, 2004. The FAA accepted the second draft without objection.

c) The County still has to complete the Policies and Procedures and the Rules and Regulations.

d) The County provided the FAA with a copy of the Rental Rate Report. The FAA considers this step complete. However, it is the FAA's recommendation that the County adjust airport rental rates at Gillespie Field when the current rate agreement expires so airport rates can more closely match market and economic conditions in the San Diego area.

- Caretaker residences should be deleted from the revised Policy and Procedures.

Grant Assurance 25 Airport Revenue

9. Marshall Avenue Loan Information*

ACTION: The County will provide the FAA with a report from its financial consultant (or other source) by July 1, 2004, detailing the Marshall Avenue project loan information, which shall include the loan amount, amounts paid to date, the interest rate on the loan, and the amortization schedule for completing payments in full.

* See Compliance Guidance Page 6 for an explanation.

STATUS: Incomplete

a) The County could not provide specific information regarding the Marshall Avenue loan. The County does not presently have a fixed repayment schedule to fully reimburse the Airport Enterprise Fund. The County indicated that it would try to eliminate the long-term payback period by issuing bonds so the loan could be repaid sooner and all at once.

- Provide information regarding the status of the bond application process.

10. Evidence of a Loan Payment*

ACTION: *The County will provide evidence that the \$225,000 loan payment was deposited in the Airport Enterprise Fund (AEF).*

STATUS: Complete – County provided a Journal Listing to the FAA on July 15, 2004.

11. Loan Reimbursement Deadline*

ACTION: *The County will confirm the dates that the AEF will be reimbursed in full for the loans made available to the County Redevelopment Agency to pay for capital improvements in the industrial and business park.*

STATUS: Incomplete (Same as Item 9)

12. Reconciliation and Certification of AEF Revenue

ACTION: *The County will provide evidence for the past six fiscal years to demonstrate that revenue from the industrial and business park is being regularly deposited in the AEF and only used for permitted airport purposes. The County will include a written certification attesting that it is the County's practice to regularly deposit these revenues in the AEF.*

STATUS: Partially complete

The County provided annual financial reports. The information was not fully responsive to the FAA request. In addition, the County did not provide a statement attesting to the integrity of the AEF. There may not be a practical way to test the integrity of the AEF other than to conduct a limited scope audit at some time in the future to test whether or not airport revenue is being reconciled in accordance with the law and the revenue use policy.

13. Airport Leasing Practices and Fair Market Value

ACTION: *The County will provide evidence to confirm that the County will follow its own Airport Leasing Practices and avoid below-FMV rental rates in all future leases.*

STATUS: Partially Complete

The County provided the FAA with a Rental Rate Report on July 30, 2004. The County disclosed that the rate setting methodology would be incorporated into the Policies and Procedures. To date, the Policies and Procedures have not been finalized. The FAA already provided comments to the County on March 7, 2005 regarding a revised draft of the Policy and Procedures.

* See Compliance Guidance Page 6 for an explanation.

- The County should update the rate setting policy in the revised Policies and Procedures.

Grant Assurance 29 Airport Layout Plan

14. Completion of the Airport Layout Plan

ACTION: The County and its consultant will work with FAA staff to complete the Draft Final ALP/Narrative Report as quickly as possible.

STATUS: Complete – FAA notification to the County dated May 13, 2005

Airport Traffic Control Tower Line-of-Sight and Part 77 Surface Penetration

15. Survey Data Transmittal

ACTION: The County will provide the date when the County will transmit survey data to the FAA Flight Procedures Office regarding Hangars 12, 13, 22, and 23.

STATUS: Complete – County notification to the FAA dated July 15, 2004

16. Compliance with Part 77

ACTION: The County will ensure that hangar projects at CRQ, RNM, L08, and L18 are in compliance with the Part 77 requirements before construction begins.

STATUS: Partially complete

The County drafted a new procedure and reported that a new procedure would be incorporated into the revised Policy and Procedures, which are not yet finalized.

- This new procedure should be described in the next edition of the County's Policy and Procedures.

Runway Safety Action Plan (RSAP)

17. Reduce Vehicle/Pedestrian Deviations

ACTION: The County will take action to curtail and eliminate vehicle and pedestrian deviations at its airports and will inform the W-P Region Runway Safety Program of its remedial action plan.

STATUS: Incomplete

a) The County reported that it would modify the Airport Design Standards form by July 20, 2004; circulate a runway incursion information flyer; develop a plan for airport entry and access control gates; revise the Policy and Procedures to include pedestrian and vehicle operating requirements and a driver training program.

b) The County has not provided the FAA with the status of these proposals. The Policy and Procedures have not been completed.

c) A proposed modification to standard for new signage was not approved by the FAA.

- Provide the status of the Airport Design Standards form, the plan for airport entry and access control gates, provisions for pedestrian and vehicle operating standards in the Policy and Procedures, and a driver training program.

B. Additional Compliance Issues

The following guidance is being provided so the County can resolve these additional compliance issues.

Grant Assurance 25 *Airport Revenue* ** Compliance Guidance

Airport Enterprise Fund

The Airport Enterprise Fund made a loan using airport revenue for purposes that are not directly related to the airport operations. The loan does not have a fixed term and the conditions of the loan do not guarantee a steady return. It appears that a loan, which was made for capital improvements to the industrial and business park, was not the best use of scarce airport revenue. If the airfield has operating and capital needs that are not being met because there is insufficient airport revenue, the loan may have been unwise because airport funds were used for low priority needs. As a result, the FAA has serious concerns that the loans consumed airport revenue that could have been spent on aeronautical development in the County's airport system.

FAA Order 5190.6A, Section 4-20, explains that the FAA can approve non-aviation uses of airport land when those uses produce income that is used to support airport operations, maintenance, and development. Non-aviation income can be used to improve the infrastructure of the revenue-producing land, such as an industrial park. However, before non-aviation income can be spent on revenue-producing land, the operational and safety needs of the airport must be satisfied. The purpose of revenue-producing land is to help support airport operations. The opposite is not true with airfield revenue. Aeronautical revenue may not be used to subsidize the non-aeronautical operations.

Airport revenue is supposed to be used for airport operations, maintenance, and development. The industrial and business park is supposed to generate revenue to support the airport and, only secondarily, to improve industrial park infrastructure. The allocations of large sums of money to industrial and municipal purposes deprived the County airport system of revenue it could have used to operate and maintain County airports and to match FAA grants.

Henceforth, the County should only use airport revenue in accordance with FAA policy. For this reason, the loans must be paid in full as soon as possible because the airport system is being made to forego needed revenue that could be better used for the aeronautical needs of County airports.

Grant Assurance 24 *Fee and Rental Structure*

El Cajon Police Department Pistol Range

In the most recent letter dated March 7, 2005, the County requested FAA concurrence with a non-aeronautical airport lease with the El Cajon Police Department for a pistol range located at Gillespie Field. The County wishes to grant the City of El Cajon a below-market value rental rate and forego rental payments in exchange for police services.

** Compliance guidance related to Items #9, 10, and 11

Fair Market Rent

We remind the County of the specific obligations with which it must comply. The requirements of US Code 47133 and 47107(b) are more fully described in the Revenue Use Policy. The Policy requires that the airport sponsor charge fair market value for the non-aeronautical use of airport land and facilities. Furthermore, the policy clearly prohibits land rentals for non-aeronautical purposes at less than the fair market value of the property.

Fair market value must be based on some recognized valuation method such as a professional appraisal. The County may not grant the airport's aeronautical rate or discounted market rates to tenants engaged in non-aeronautical activities.

The County already has a market-based rent for the industrial and business park. The County may choose to apply the industrial park rate to the shooting range since the industrial rate should reasonably approximate the fair market value for non-aeronautical uses of the airport. The County may wish, as part of an appraisal, to research the comparable values of shooting ranges elsewhere in San Diego, Orange, and Los Angeles Counties.

However, if the County does not use the industrial rate to calculate the rent of the pistol range, we shall expect the County to conduct a professional appraisal to determine the fair market value of the shooting range.

- Please advise us how the County will determine the rental rate, that is, either apply the industrial rate or perform an appraisal.
- If the latter, please conduct an appraisal and provide the FAA with a copy.

Services in Lieu of Rent

The County disclosed that it is willing to allow the City to provide the airport with police services rather than collect rental payments from the Police Department. A reciprocal arrangement that allows the City to exchange police services in lieu of rent must be supported by documentary evidence, which can take the form of a written agreement between the City and County. The agreement must be developed that includes the type, amount, schedule, and itemized cost of police services that will be delivered to the airport. There must be provisions to guarantee that a minimum level of service will be provided and, in the event of failure to deliver services, the City will be obligated to compensate the airport for the value of the missed services. As with the lease agreement, the service agreement must also be signed by City and County officials.

If the County wishes to accept police services in lieu of rent, we shall expect the County to negotiate a written agreement with the City for police services and submit it to the FAA for review and approval before the County consummates a new lease for the pistol range.

- Please provide us with a copy of the agreement for services in lieu of rent.

Department of Public Works

We are asking the County to substantiate that the land-use agreement with the Department of Public Works (DPW) complies with federal requirements. As with the pistol range, we wish to know the rent charge being applied to the leasehold site. If DPW was granted free rent in exchange for services to the airport, we wish to obtain a copy of the service agreements.

DPW occupies airport land, which is used for a storage facility on the upper portion of the industrial park. Our records indicate that DPW does not pay rent for its airport tenancy. The previous Airport Director informed the FAA that arrangements were being made so DPW would begin paying rent to the airport.

We are requesting that the County provide the same kind of information that was requested above for the pistol range:

Fair Market Value

Is DPW presently paying rent?

Is the rental rate based on fair market value?

Is the industrial park rate being applied to DPW?

If the rental rate is neither the market value nor the industrial park rate, an appraisal will be needed to justify the rental rate.

- Please advise us how the County will determine the rental rate, that is, either apply the industrial rate or perform an appraisal.
- If the latter, please conduct an appraisal and provide the FAA with a copy.

Services in Lieu of Rent

Is DPW providing services to the airport in lieu of rent?

Are the services being provided in accordance with an agreement?

If DPW is not paying market rent or there is no service agreement, a written agreement will have to be developed to establish what services will be provided to the airport in lieu of rent.

- Please provide us with a copy of the agreement for services in lieu of rent.

Follow-up

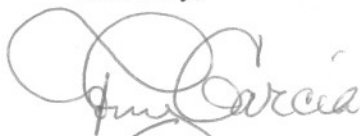
We shall expect a reply from the County within 60 days after your receipt of this letter, which provides a status report regarding the incomplete compliance items and issues. For all actions that are not completed in 60 days, please state the date when the County expects to complete its action. Please send your report to:

Federal Aviation Administration
Airports Division, AWP-620.1
P.O. Box 92007
Los Angeles, CA 90009-2007

We believe it advisable to remind the County of Section 722 of Public Law 106-181 (April 5, 2000), which amended 49 USC 47131. This provision requires, as part of the Secretary's annual report to Congress, the inclusion of a detailed statement listing airports that the FAA believes are not in compliance with grant assurances or other requirements with respect to airport land use. The report includes a description of the non-compliance issues, the timeliness of corrective actions by airport sponsors, and the actions the FAA intends to take to bring the airport sponsors into compliance.

Based on the Section 722 requirement, Gillespie Field was included in the last annual report to Congress with the expectation that the County would correct the compliance deficiencies. If the County chooses not to take appropriate action and the non-conforming conditions continue, the FAA will have to report that the County has failed to take corrective action. As a result, the FAA will likely initiate action to enforce the conveyance deed and grant agreements by withholding Airport Improvement Program grants or other appropriate measures.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tony Garcia", with a large, stylized loop at the beginning.

Tony Garcia
Airports Compliance Specialist